

## INFORMATION PAPER

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SUBJECT: Article 138 Complaint Process for General Court-Martial Convening Authorities

1. PURPOSE: To provide information about General Court-Martial Convening Authority (GCMCA) duties in relation to an Article 138 UCMJ Complaint.

2. BACKGROUND:

a. Article 138, Uniform Code of Military Justice (UCMJ) complaints are statutory. 10 United States Code (USC) section 938 states, in part, as follows:

Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of . . . .

b. Army Regulation 27-10 implements the statute in the Army. GCMCAs must follow the process that is detailed at para. 20-11, AR 27-10:

- 1) *Conduct an examination into the complaint.*
- 2) *Take action on the complaint.*
- 3) *Provide notice to the complainant of GCMCA action.*
- 4) *Forward the complaint to HQDA upon completion of the action.*

3. DISCUSSION: This section will highlight specific GCMCA actions.

a. *Examination into the complaint.*

1) The first part of the process is for the GCMCA to investigate the complaint and make specific findings. The GCMCA can do this personally (e.g., via interview, reading the submissions etc) or by delegation (e.g., appoint an AR 15-6 investigating officer to make specific findings and recommendations).

2) Once the GCMCA has completed the investigation, and is satisfied that the complaint is properly submitted under Article 138 UCMJ, then the GCMCA makes specific findings. The GCMCA should document findings by describing the factual basis and reasoning that supports whether the act or omission complained of was:

- (a) In violation of law or regulation.
- (b) Beyond the legitimate authority of the respondent (commander).
- (c) Arbitrary, capricious, or an abuse of discretion.
- (d) Materially unfair.

b. *Action on the complaint.*

1) If the alleged wrong falls into a category of wrongs that can be redressed by an established system (e.g., OER appeal; IG Whistleblower investigation), the GCMCA directs the complainant to the proper channel and identifies the applicable regulations under which the complainant may proceed.

2) If the alleged wrong meets the criteria of Article 138 (e.g., no other system to redress), then the GCMCA determines the merits of the complaint by either denying the redress, or granting redress within the authority of the GCMCA to provide. If another agency can provide redress, the GCMCA forwards the action to agency.

c. *Notice to complainant.* The GCMCA provides written notice of action taken.

d. *Forwarding the complaint to HQDA.* The GCMCA packages the entire action and forwards to HQDA for review by The Judge Advocate General (TJAG) who reviews the action on behalf of the Secretary of the Army. It is important to note that the package must include the ORIGINAL request for redress, the refusal, and supporting materials. TJAG will inform the complainant, respondent (commander), and GCMCA of the final disposition of the complaint.